Office-Supreme Court, U.S.
FILED
APR 1 1965
JOHN F. DAVIS, CLERK

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 1034

HASKELL BILLY,
Appellant,

VERSUS

STATE OF OKLAHOMA,
Appellee.

JURISDICTIONAL STATEMENT

SID WHITE
Commerce Exchange Building
Oklahoma City, Oklahoma
Attorney for Appellant

March, 1965

UTTERBACK TYPESETTING CO., 13 SO. WALKER, OKLAHOMA CITY, PH. CE 5-6750

In the
Supreme Court of the United States
OCTOBER TERM, 1964

No. ....4.....

HASKELL BILLY,
Appellant,

VERSUS

STATE OF OKLAHOMA,
Appellee.

JURISDICTIONAL STATEMENT

COMES NOW the Appellant praying an appeal herein, and for grounds and cause of jurisdiction, states:

That the only material part of the record here involved is the Information, and a printed copy thereof is hereto attached, marked Exhibit "A."

That in the course of the evolution of the Common Law of England, upon banning the Star Chamber trials, it was enacted that no man should be put on trial for a criminal offense save that he be apprised of the exact nature of the charge against him and be granted a speedy and public trial.

That in the orderly organization of this Government and in the development of its philosophy, it was provided:

That no person should be deprived of life, liberty or property without due process of law.

That in criminal cases, it is the general policy of the law to provide such notice as is required by due process of law to a defendant, by an information or indictment.

That in Oklahoma, under its Title 47, O.S.A., Section 23.1, appears a Statute enacted to define motor vehicles, and it is in words and figures, as follows, to-wit:

> "Motor Vehicle. Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails or stationary tracks."

That Title 47, O.S.A., in its Section 93, reads as follows:

> "It shall be unlawful for any person who is under the influence of intoxicating liquor, or who is an habitual user of veronal, barbital, nembutal, sodium-amatal, or other barbitrate, or barbituric acid preparations, chloralhydrate, bromide, benzedrine, or amphetamine preparations, or narcotic drugs, to operate or drive a motor vehicle on any highway within this State, as defined in Section 1, of the Act (10322) and any person violating the provisions of this Section shall be deemed guilty of a misdemeanor for the first offense and upon conviction therefor shall be punished by imprisonment in the county jail for a period of time not to exceed one (1) year, or by a fine of not more than Five Hundred ($500.00) Dollars or by both such fine and imprisonment * * *."

That, in attempting to charge the defendant with the offense announced by said last above quoted Statute, the

County Attorney of Oklahoma County filed an Information, which, in its charging part, is as follows:

> "That is to say, the said defendant, in the county and state aforesaid, and on the day and year aforesaid, then and there being, did then and there wilfully, wrongfully and unlawfully, run, drive and operate a 1956 Mercury motor vehicle, bearing 1962 Oklahoma License No. 1-176721, at and upon a public street from an unknown point to a point at 1st and North Western, Oklahoma City, in said county and state, while under the influence of intoxicating liquor."

As is readily apparent therefrom, said Information does not charge that the appellant here (defendant below) did "operate or drive a motor vehicle on any highway within this State * * *."

That, therefore, to try the defendant as he was tried, with no more information than this, discloses a purpose to convict him, if he came from any point of the compass, depriving him of that notice and information required by due process of law, to enable his defense.

That of late, this Honorable Court has asserted the paramount importance of the right of persons above the right of things and has reassumed its prerogative to perpetuate liberty by enforcing the Constitution.

That great indulgence has been extended toward the State and State officers, in matters of this sort, to the point of threatened destruction of human liberty.

WHEREFORE, this appellant prays that this Honorable Court take jurisdiction hereof and reverse the Court of Criminal Appeals of Oklahoma, to the end that justice may be done.

Respectfully submitted,

SID WHITE
Commerce Exchange Building
Oklahoma City, Oklahoma
Attorney for Appellant

March, 1965

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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 1034

HASKELL BULLY,
Appellant,

VERSUS

STATE OF OKLAHOMA,
Appellee.

APPENDIX TO JURISDICTIONAL STATEMENT

SID WHITE
Commerce Exchange Building
Oklahoma City, Oklahoma
Attorney for Appellant

April, 1965

UTTERBACK TYPESETTING CO., 13 SO. WALKER, OKLAHOMA CITY, PH. CE 8-8780

In the
Supreme Court of the United States
OCTOBER TERM, 1964

No. 1034

HASKELL BILLY,
Appellant,

VERSUS

STATE OF OKLAHOMA,
Appellee

APPENDIX TO JURISDICTIONAL STATEMENT

APPENDIX "A"

INFORMATION

IN THE COMMON PLEAS COURT, IN AND FOR
OKLAHOMA COUNTY, STATE OF OKLAHOMA

The State of Oklahoma	)	
Plaintiff,	)	
vs.	)	29118
Haskel Emile Billy	)	Information
Defendant.	)	

In the name and by the authority of the State of Oklahoma, comes now JAMES H. HARROD, the duly qualified and acting County Attorney in and for Oklahoma County, State of Oklahoma, and on his official oath gives the Common Pleas Court in and for said Oklahoma County and the

State of Oklahoma to know and be informed that heretofore, to-wit:

on the 21st day of September A.D., 1962, in Oklahoma County, State of Oklahoma, whose more full and correct name HASKELL EMILE BILLY is to your informant unknown, then and there being, did then and there wilfully unlawfully and wrongfully commit the crime of OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR in the manner and form as follows, to-wit:

That is to say, the said defendant, in the county and state aforesaid, and on the day and year aforesaid, then and there being, did then and there wilfully, wrongfully and unlawfully, run, drive and operate a 1956 Mercury motor vehicle, bearing 1962 Oklahoma License No. 1-176721, at and upon a public street from an unknown point to a point at 1st and North Western, Oklahoma City, in said county and state, while under the influence of intoxicating liquor;'

contrary to the form of the statutes in such cases made and provided and against the peace and dignity of the State of Oklahoma.

JAMES H. HARROD
County Attorney, Oklahoma County

By James H. Harrod
James H. Harrod, County Attorney

STATE OF OKLAHOMA, OKLAHOMA COUNTY, SS.

I, J. C. NUTTER, being duly sworn on my oath, declare that the statements set forth in the above information are true.

J. C. Nutter

Subscribed and sworn to before me this 21st day of September, 1962.

Dale Smith, Court Clerk
By Ramona L. Fisher
Deputy

sp
sent Photocopy to
Sid White 10-5-62

FILED
In Court of Criminal Appeals
State of Oklahoma
OCT 28 1964
ANDY PAYNE
Clerk

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

Haskell, Emile Billy,	)	
Plaintiff in Error,	)	
vs.	)	No. A-13,491
The State of Oklahoma,	)	
Defendant in Error.	)	

-SYLLABUS-

1. Where the defendant appeals from a judgment of conviction and no briefs are filed in support of the petition in error, this Court will examine the records only for fundamental error. If none appears of record the Judgment will be affirmed.

2. The record in the case at bar does not reveal any fundamental error. The evidence is sufficient to support the verdict.

An Appeal From the Common Pleas Court of Oklahoma County, Okla., Honorable Dwain D. Box, Judge.

[APPENDIX]

Haskell Emile Billy was convicted of the crime of Operating A Motor Vehicle While Under the Influence of Intoxicating Liquor, and appeals.
AFFIRMED.

Sid White, Oklahoma City, Oklahoma, Attorney for Plaintiff in Error.

Charles Nesbitt, Attorney General, Hugh H. Collum, Asst. Atty. Gen., Attorneys for Defendant in Error.

OPINION BY NIX, J.

JOHNSON, P. J. and
BUSSEY, J., CONCUR.
NIX, JUDGE:

Haskell Emile Billy was charged by Information in the Common Pleas Court of Oklahoma County with the crime of Operating a Motor Vehicle while Under the Influence of Intoxicating Liquor. He was tried by a jury, found guilty and sentenced to pay a fine of $1.00 and 10 days in the County Jail.

His appeal was lodged in this Court within the time prescribed by law on March 2, 1964, and no brief was filed by counsel for plaintiff in error, nor any request for an extension of time made to this Court within the time prescribed by law. Nor for that matter, until the day this cause was set for oral argument on a Motion to Dismiss by the State. On that day, September 23, 1964, (some 6 months later) counsel appeared in court and asked for time to brief. Request was denied, due to the length of time involved, and the cause was submitted on the record. Counsel for defendant then mailed to this office a copy of a dissertation labled "Brief of Petitioner." We have checked the clerks office and nothing was filed in their office. However, this writer has given it some consideration. It raises no

fundamental error, but only states counsel's same argument he has raised previously on two other appeals in this Court (Clark v. State, Okl.Cr. 383 P2d 236; Watson v. State, 375 P2d 352.) and which was settled prior to that in the case of Hanlan v. State, 96 Okl.Cr. 331, 254 P2d 373. This Court can see no reason to discuss this question further.

This Court has consistently and repeatedly held, as in the case of Crolley v. State, Okl.Cr. 377 P2d 63:

> "Where the defendant appeals from a judgment of conviction and no briefs are filed in support of the petition in error, this Court will examine the records only for fundamental error. If none appears of record the judgment will be affirmed."

The record has been examined carefully in the instant case, no fundamental error appears, and the evidence is sufficient to support the verdict of the jury.

The judgment and sentence of the trial court is hereby Affirmed.

JOHNSON, P.J., and
BUSSEY, J., CONCUR.